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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,815	04/09/2004	Murielle Vigny	88265-7404	8901
29157	7590	06/21/2006	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/820,815	Applicant(s) VIGNY ET AL.	
	Examiner Patrick F. Brinson	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 11, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 10007121 to **Minoru et al.**

The **Minoru et al.** reference discloses a flexible container having a body (11) having in greater section a dimension, at least one neck (17) that has an internal diameter and a wall or walls forming the body of the container, wherein it appears that the body is made of one piece and is formed of a flexible plastic such that it can deform at a constant surface area, wherein the walls are deformed such that when the walls at (13, 18) contact the bearing surface (14) at least one non-planar wall portion is formed. The ratio between the dimension of the neck and body are 1:3 to 1:10, are recited in claim 1. It is disclosed that the neck is fitted with a closure (12). As to the type of liquid provided within the container, it should be noted the device is disclosed as a dispensing container, so the content of the container is a flowable product, but they specifically water or carbonated beverage is not disclosed. To specifically recite the type of flowable product would be considered intended use. It has been held that

a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Minoru et al.**

The **Minoru** reference does not disclose the specific dimensions such as wall thickness or the amount of plastic used in forming the container. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the walls having a thickness of between 30 um and 100 um because Applicant has not disclosed that this particular thickness provides an advantage, is used for a particular purpose, or solves a stated problem over that which is solved by the **Minoru et al.** reference. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well

with the thickness of the **Minoru et al.** reference wherein it provides both the flexibility needed for deformation and sufficient mechanical strength. Therefore, it would have been an obvious matter of design choice to modify **Minoru et al.** to obtain the invention as specified in claims 9 and 10.

3. Claims 7 and 8 rejected under 35 U.S.C. 103(a) as being unpatentable over **Minoru et al.** in view of **Carlisle**.

The **Minoru et al.** reference does not disclose the material from which the walls are formed, however it is obviously of a flexible material that is stable enough to support the container in a self-standing position once it contacts the surface. The patent to **Carlisle** disclose a self-dispensing container that also is formed of a material that will yield under the influence of applied force and is supple and yet exhibits a degree of rigidity. **Carlisle** discloses that materials that meet the criteria include polyethylene terephthalate resin (PET). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute for the material used to form the walls of **Minoru et al.** with PET as suggested by **Carlisle** in order to alternatively form the container wall with a flexible, yet fairly rigid material that will allow the container to stand on its own.

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Minoru et al.** in view of **Hagihara**.

The patent to **Minoru et al** does not disclose the closure fitting as including a distribution tap. The patent to **Hagihara** discloses a self-standing container formed from a flexible plastic material and being provided with a non-planar portion (5) at the point of contact between the body and the surface on which it rests. The container including body and neck portions, wherein the neck is fitted with a closure that includes a distribution cap that can be operated with one hand of a user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide onto the spout of closure of **Minoru et al.** a closure including a distribution cap, as suggested by **Hagihara** in order to alternatively dispense fluid from the container, wherein both means are equal in functioning to contain the fluid within the container prior to dispensing.

Response to Amendment

5. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. The Japanese reference to **Minoru et al.** discloses a dispensing container having a body to neck ratio of 1:3 to 1:10 as recited in the claims, and includes a wall portion that when contacts a bearing surface can deform to a non-planar portion.

Allowable Subject Matter

6. Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Kuehn, Geake, Bedwell et al., Leisse, Haunhorst, and Viegalmann are all pertinent to Applicant's invention in disclosing flexible containers or containers having a non-planar portion that contacts a bearing surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick F. Brinson
Primary Examiner
Art Unit 3754

P. F. Brinson
June 15, 2006